

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 45-003-13-1-5-00214-16  
45-003-16-1-5-00948-17  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-18-304-013.000-003  
**Assessment Years:** 2013 & 2016

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**Procedural History**

1. Petitioner initiated a 2013 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 19, 2015. On January 6, 2016, Petitioner filed a Form 131 petition with the Board.
2. Petitioner initiated a 2016 appeal with the PTABOA. The PTABOA issued notice of its final determination on May 10, 2017. On June 26, 2017, Petitioner filed a Form 131 petition with the Board.
3. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
4. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on January 29, 2018. Neither the ALJ nor the Board inspected the property.
5. James Nowacki, Petitioner, was sworn and testified. Robert W. Metz and Joseph E. James, Lake County Hearing Officers, were sworn as witnesses for the Respondent.

**Facts**

6. The subject property is a vacant residential lot located at 4413 W. 26<sup>th</sup> Place in Gary.
7. For 2013, the property was assessed at \$3,200. For 2016, the property was assessed at \$3,000.

8. Petitioner requested an assessed value of \$1,800.<sup>1</sup>

### **Record**

9. The official record contains the following:
- a. A digital recording of the hearing
  - b. Exhibits:

Neither Petitioner nor Respondent presented any exhibits.

Board Exhibit A:	Form 131 petitions and attachments,
Board Exhibit B:	Notices of hearing,
Board Exhibit C:	Hearing sign-in sheet,

- c. These Findings and Conclusions.

### **Burden**

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).
12. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township

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<sup>1</sup> Petitioner requested an assessed value of \$1,700 on the Forms 131 but requested a value of \$1,800 at the hearing.

assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The assessed value did not change from 2012 to 2013. Petitioner, therefore, has the burden of proof for 2013. Petitioner did not appeal the 2015 assessed value and the assessed value actually decreased from 2015 to 2016. Petitioner, therefore, has the burden of proof for 2016.

### **Summary of Parties’ Contentions**

15. Petitioner’s case:
  - a. Petitioner acquired the property in 2009 for \$100 at auction. According to Petitioner, a tax auction is the only market for these types of properties. *Nowacki testimony.*
  - b. Petitioner contends that this property is located close to two other parcels he previously appealed. He contends Respondent made reasonable adjustments to those other parcels but not to the subject parcel. He would accept the same \$1,800 valuation for this property that he indicated he would accept for the other parcels. He further claims he would have accepted that value five years ago and saved taxpayers the expenses involved in the appeal process. *Nowacki testimony.*
  - c. Petitioner contends the property is in the same blighted area as the other appealed parcels. The area has high assessments, high tax rates, and a lack of services. He contends the high taxes and the over-assessments cause owners to abandon their properties. Further, Petitioner contends elected officials nurture the blight as part of the process to drive people from their properties. Respondent does not consider the blight and does not contemplate the actual market transactions, which are the tax sales. *Nowacki testimony.*

16. Respondent’s case:

Respondent contends Petitioner has not provided any empirical data to suggest lowering the assessed values. Because Petitioner has not provided any evidence, it is Respondent’s position that there should be no change for 2013 or 2016. *James testimony.*

### **ANALYSIS**

17. Petitioner failed to make a prima facie for a reduction in the assessed value for either 2013 or 2016. The Board reached this decision for the following reasons:
  - a. Indiana assesses real property based on its true tax value, which the Department

- of Local Government Finance (“DLGF”) has defined as the property’s market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property’s market value-in-use, a party may offer evidence that is consistent with the DLGF’s definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) will often be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
- b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the 2013 assessment at issue in this appeal was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f). The valuation date for 2016 was January 1, 2016. Ind. Code § 6-1.1-2-1.5.
  - c. Petitioner purchased the property at auction for \$100. However, Petitioner did not present any documentation to substantiate the purchase price. He contends the property should be assessed at \$1,800. Similarly, he presented no evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
  - d. Petitioner failed to make a prima facie case for changing the assessment for either year. Where a Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### CONCLUSION

- 18. Petitioner failed to establish a prima facie case that the 2013 or 2016 assessed values are incorrect. Consequently, the Board finds for Respondent.

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 and 2016 assessed values should not be changed.

ISSUED: April 26, 2018

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.